

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 29

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte S. ELWOOD YANDLE

Appeal No. 2002-1720
Application No. 09/100,494

ON BRIEF

Before STAAB, MCQUADE and BAHR, Administrative Patent Judges.
BAHR, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 11-15, 17 and 20-33, which are all of the claims pending in this application.

BACKGROUND

The appellant's invention relates to a weed trimmer which uses recycled coat hangers and common nails as blades (specification, page 1). Further understanding of the invention may be obtained from a reading of claim 11, which is reproduced, infra, in the opinion section of this decision.

The examiner relied upon the following prior art references in rejecting the appealed claims:

Wixson	3,303,637	Feb. 14, 1967
Fisher et al. (Fisher)	4,126,990	Nov. 28, 1978
Lee	5,862,598	Jan. 26, 1999
		(filed Jun. 5, 1996)

The following rejections are before us for review.

Claims 11-14, 17, 26-29 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee in view of Fisher.

Claims 15, 20-25, 30, 32 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lee in view of Fisher and Wixson.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 28) for the examiner's complete reasoning in support of the rejections and to the brief (Paper No. 27) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Independent claim 11 reads as follows:

11. Apparatus for cutting weeds, comprising:

a weed cutter head having means for attachment to a weed trimmer, wherein the weed cutter head includes first recess means for receiving U-shaped blades and second recess means for receiving nails in a manner which allows the nails to trim weeds;

U-shaped blades receivable in the first recess means;
and
nails receivable in the second recess means.

Lee, the examiner's jumping off point in the obviousness rejections, discloses a cutting attachment for use in cutting vegetation comprising a one-piece rigid body or hub 42 provided with recesses for receiving a plurality of cutting blades 121 formed of elongate flat planar bodies 122 of a high-impact plastic and additional cutting elements in the form of six cutting strings 161 formed by three elongate flexible cutting lines 162 made from a suitable material such as high-impact plastic. As illustrated in Figure 1, the cutting strings 161 are held generally in a U-shape. Lee lacks nails as recited in claim 11.

Fisher discloses a cutter disc assembly for a rotary lawn mower comprising a cutter disc 20 provided with evenly spaced openings 27, 28, 29 and grooves 37, 38, 39 in alignment with the openings for receiving outwardly extending cutter pins 30. The cutter pins are formed of durable, abrasion resistant plastic such as nylon, with each pin including a head 31, a shank 32 and "a stiffly resilient tip portion 33 terminating in an outer tip 34" (column 3, lines 28-31). The grooves 37, 38, 39 have curved outwardly flaring rear walls 42 of increasing curvature. The rear wall of each groove serves as a backstop for the shank of the pin as the tip portion of the pin strikes an obstruction,

such as a rock or other weighty debris. Each groove has a front wall 43 adjacent the pin which is curved and outwardly flaring so that “when the pin 30 is released, tending, because of its resilience, to rebound in the forward direction through an angle α , the pin bends about the curved front wall 43 with the bending, again, being distributed along the length dimension of the pin for avoidance of concentrated stress” (column 3, line 65, to column 4, line 2).

According to the examiner, it would have been obvious to “alternatively use and replace Lee’s second blade means [blades 121] with the one taught by Fisher, as an alternative blade means for achieving the same objective of more effectively cutting vegetation” (answer, page 4). Appellant argues that, even if Lee were modified to replace the blades 121 with the pins taught by Fisher, the invention recited in claim 11 would not result, as Fisher’s pins 30 are not “nails” as called for in claim 11.

We agree with the appellant that Fisher’s pins 30 are not “nails” as one of ordinary skill in the art would understand them in light of appellant’s underlying disclosure. While it is true that the claims in a patent application are to be given their broadest reasonable interpretation consistent with the specification during prosecution of a patent application (see, for example, In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)), it is also well settled that terms in a claim should be construed as those skilled in the art would construe them (see Specialty Composites v. Cabot Corp., 845 F.2d 981, 986, 6 USPQ2d 1601, 1604 (Fed. Cir. 1988) and In re

Johnson, 558 F.2d 1008, 1016, 194 USPQ 187, 194 (CCPA 1977). We note at the outset that the examiner's cited definition of nails as "a slender usually pointed and headed fastener" on page 7 of the answer is not complete, as Merriam-Webster's Collegiate Dictionary, Tenth Edition (Merriam-Webster, Inc. 1999) defines "nail" as "a slender usually pointed and headed fastener designed to be pounded in." We also note that Webster's New World Dictionary, Third College Edition (Simon & Schuster, Inc. 1988) defines "nail" as "a tapered piece of metal, commonly pointed and having a flattened head, driven with a hammer, and used to hold pieces or parts together, to hang things on, etc." While it may theoretically be possible to pound or drive the resilient plastic pins of Fisher with a hammer to hold parts together,¹ thereby using Fisher's pins in the same manner as nails, one of ordinary skill in the art would not consider the resilient plastic pins disclosed by Fisher to be "nails" in the context of appellant's invention, especially in light of the reference to "20d common nails" in appellant's specification (page 1, line 23, and page 3, line 27).

Inasmuch as Lee does not disclose nails and the plastic pins 30 of Fisher are not "nails" as called for in claim 1, it follows that the combination of Lee and Fisher is insufficient to have suggested the subject matter of claim 11. The examiner's rejection

¹ Given the intentional resilience characteristic of the pins disclosed by Fisher to permit the pins to deflect and bounce back so as to avoid stress concentrations upon impact, it is not even clear that such use is possible.

of claim 11, as well as claims 12-14, 17, 26-29 and 31 which depend from claim 11, is reversed.

Wixson, relied upon by the examiner for its teaching of lawn mower blades formed of resilient wire material such as spring steel or the like (column 1, lines 64-65), with the inherent resiliency of the wire material providing a whipping action which increases cutting efficiency while simultaneously permitting the blade member to bend or flex in the event it contacts a rock or the foot or shoe of the operator (column 2, lines 30-35), provides no cure for the above-noted deficiency of the combination of Lee and Fisher. It thus follows that the rejection of claims 15, 20-25, 30, 32 and 33, which depend from claim 11, is also reversed.

CONCLUSION

To summarize, the decision of the examiner to reject claims 11-15, 17 and 20-33 under 35 U.S.C. § 103(a) is reversed.

REVERSED

LAWRENCE J. STAAB
Administrative Patent Judge

JOHN P. MCQUADE
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

)
)
)
)
)
) BOARD OF PATENT
) APPEALS
) AND
) INTERFERENCES
)
)
)
)
)

JDB/eld

Appeal No. 2002-1720
Application No. 09/100,494

Page 8

Garvey, Smith, Nehrbass & Doody
Three Lakeway Center, Suite 3290
3838 North Causeway Boulevard
Metairie, LA 70002-1767